
SENATE BILL 6785

State of Washington 61st Legislature 2010 Regular Session

By Senators King, Honeyford, and Schoesler

Read first time 01/27/10. Referred to Committee on Judiciary.

1 AN ACT Relating to abatement of nuisances involving criminal street
2 gang activity; and adding a new chapter to Title 7 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Building" includes, but is not limited to, any structure or
7 separate part or portion thereof, whether permanent or not, or the
8 ground itself.

9 (2) "Criminal street gang activity" means a pattern of criminal
10 street gang activity as defined in RCW 9.94A.030.

11 NEW SECTION. **Sec. 2.** Every building or unit within a building
12 used for the purpose of aiding, promoting, or conducting criminal
13 street gang activity, and every building or unit within a building
14 wherein or upon which such acts take place, is a nuisance that shall be
15 enjoined, abated, and prevented, whether it is a public or private
16 nuisance. In a multiunit building, only the offending unit shall be
17 declared a nuisance, and only the offending unit shall be enjoined,
18 abated, and prevented.

1 NEW SECTION. **Sec. 3.** (1) Any person with legal standing and who
2 resides, works in, or owns property in the same multifamily building,
3 apartment complex, or within a one-block radius may bring an action as
4 provided for in section 2 of this act by filing a complaint with a law
5 enforcement agency in the county in which the property is located. The
6 action shall be commenced by the filing of a complaint alleging the
7 facts constituting the nuisance. The action may also be commenced by
8 any public agency.

9 (2) Any complaint filed under this chapter shall be verified or
10 accompanied by affidavit. A copy of the complaint and affidavit must
11 be served on the legal owner of the property, if different from the
12 current occupant. For purposes of showing that the owner or his or her
13 agent has had an opportunity to abate the nuisance, the affidavit shall
14 contain a description of all attempts by the applicant to notify and
15 locate the owner of the property or the owner's agent, including at
16 least one attempt to notify the owner or owner's agent by registered
17 mail.

18 (3) In addition, the affidavit shall describe in detail the adverse
19 impact associated with the property on the surrounding neighborhood.
20 Adverse impact includes, but is not limited to, the following: Any
21 recent search warrants served on the property where evidence of
22 criminal street gang activity was seized; recent arrests of persons who
23 frequent the property for purposes of criminal street gang activity; a
24 recent increase in the number of complaints made to law enforcement of
25 illegal activity associated with the property which result in arrests
26 for criminal street gang activity; recent increases in arrests for
27 weapons violations of persons who frequent the property; and recent
28 increases in graffiti or garbage in the immediate vicinity.

29 (4) Upon receipt of the complaint, the law enforcement agency shall
30 conduct an investigation into the allegations and, if probable cause is
31 found that a violation of this chapter is occurring, the complaint and
32 results of the investigation shall be filed in the county superior
33 court. After receiving the complaint, the court shall grant a hearing
34 within five business days or seven calendar days.

35 NEW SECTION. **Sec. 4.** (1) Upon application for a temporary
36 restraining order or preliminary injunction, the court may, upon a
37 showing of good cause, issue an ex parte restraining order or

1 preliminary injunction, preventing the defendant and all other persons,
2 other than the legal owner, from removing or in any manner interfering
3 with the personal property and contents of the place where the nuisance
4 is alleged to exist and may grant preliminary equitable relief as is
5 necessary to prevent the continuance or recurrence of the nuisance
6 pending final resolution of the matter on the merits. Pending the
7 decision, the stock in trade may not be so restrained, but an inventory
8 and full accounting of all business transactions may be required.

9 (2) The restraining order or preliminary injunction may be served
10 by handing to and leaving a copy with any person in charge of the place
11 or residing in the place, or by posting a copy in a conspicuous place
12 at or upon one or more of the principal doors or entrances to the
13 place, or by both delivery and posting. The officer serving the order
14 or injunction shall forthwith make and return into court an inventory
15 of the personal property and contents situated in and used in
16 conducting or maintaining the nuisance. Additionally, a copy of the
17 restraining order or preliminary injunction must be sent by registered
18 mail to the owner of the building.

19 (3) Any violation of the order or injunction is a contempt of
20 court, and where the order or injunction is posted, mutilation or
21 removal thereof while the same remains in force is a contempt of court
22 if the posted order or injunction contains a notice to that effect.

23 NEW SECTION. **Sec. 5.** A temporary restraining order or preliminary
24 injunction shall not be issued under this chapter except upon the
25 giving of a bond or security by the applicant, in the sum that the
26 court deems proper, but not less than one thousand dollars, for the
27 payment of such costs and damages as may be incurred or suffered by any
28 party who is found to have been wrongfully restrained or enjoined. A
29 bond or security shall not be required of the state of Washington,
30 municipal corporations, or political subdivisions of the state of
31 Washington.

32 NEW SECTION. **Sec. 6.** An action under this chapter shall have
33 precedence over all other actions, except prior matters of the same
34 character, actions under chapter 7.43 RCW, criminal proceedings,
35 election contests, hearings on temporary restraining orders and

1 injunctions, foreclosures by a legal owner, and actions to forfeit
2 vehicles used in violation of the uniform controlled substances act.

3 NEW SECTION. **Sec. 7.** (1) If the complaint under this chapter is
4 filed by a citizen, the complaint shall not be dismissed by the citizen
5 for want of prosecution except upon a sworn statement made by the
6 citizen and the citizen's attorney, if the citizen has one. The
7 statement shall set forth the reasons why the action should be
8 dismissed. The case shall only be dismissed if so ordered by the
9 court.

10 (2) In case of failure to prosecute the action with reasonable
11 diligence, or at the request of the plaintiff, the court, in its
12 discretion, may substitute any other citizen consenting to be
13 substituted for the plaintiff.

14 NEW SECTION. **Sec. 8.** A copy of the complaint, together with a
15 notice of the time and place of the hearing of the action, shall be
16 served upon the defendant at least three business days before the
17 hearing. Service may also be made by posting the papers in the same
18 manner as is provided for in section 4 of this act. In addition to
19 service by posting, a copy of the complaint must be sent by registered
20 mail to the owner of the building or the agent of the owner. If the
21 hearing is then continued at the request of any defendant, all
22 temporary orders and injunctions shall be extended as a matter of
23 course.

24 NEW SECTION. **Sec. 9.** (1) Except as provided in subsection (2) of
25 this section, if the existence of the nuisance is established in the
26 action, an order of abatement shall be entered as part of the final
27 judgment in the case. The plaintiff's costs in the action, including
28 those of abatement, are a lien upon the building or unit within a
29 building, subject to the lien of the legal owner. The lien is
30 enforceable and collectible by execution issued by order of the court.

31 (2) If the court finds and concludes that the owner of the building
32 or unit within a building:

33 (a) Had no knowledge of the existence of the nuisance or has been
34 making reasonable efforts to abate the nuisance;

1 (b) Has not been guilty of any contempt of court in the
2 proceedings; and

3 (c) Will immediately abate any such nuisance that may exist at the
4 building or unit within a building and prevent it from being a nuisance
5 within a period of one year thereafter, the court shall, if satisfied
6 with the owner's good faith, order the building or unit within a
7 building to be delivered to the owner, and no order of abatement shall
8 be entered. If an order of abatement has been entered and the owner
9 subsequently meets the requirements of this subsection, the order of
10 abatement shall be canceled.

11 NEW SECTION. **Sec. 10.** Any final order of abatement issued under
12 this chapter shall:

13 (1) Direct the removal of all personal property subject to seizure
14 and forfeiture under RCW 69.50.505 from the building or unit within a
15 building, and direct the commencement of proceedings to forfeit the
16 property under the forfeiture provisions of RCW 69.50.505;

17 (2) If the building or unit is not subject to the interests of
18 innocent legal owners, provide for the immediate closure of the
19 building or unit within a building against its use for any purpose, and
20 for keeping it closed for a period of one year unless released sooner
21 as provided in this chapter; and

22 (3) State that while the order of abatement remains in effect, the
23 building or unit within a building shall remain in the custody of the
24 court.

25 NEW SECTION. **Sec. 11.** In all actions brought under this chapter,
26 the proceeds and all moneys forfeited under the forfeiture provisions
27 of RCW 69.50.505 shall be applied as follows:

28 (1) First, to the fees and costs of the removal and sale;

29 (2) Second, to the allowances and costs of closing and keeping
30 closed the building or unit within a building;

31 (3) Third, to the payment of the plaintiff's costs in the action;
32 and

33 (4) Fourth, the balance, if any, to the owner of the property.

34 If the proceeds of the sale of items subject to seizure and
35 forfeiture do not fully discharge all of the costs, fees, and

1 allowances, the building or unit within a building shall then also be
2 sold under execution issued upon the order of the court, and the
3 proceeds of the sale shall be applied in a like manner.

4 A building or unit within a building shall not be sold under this
5 section unless the court finds and concludes by clear and convincing
6 evidence that the owner of the building or unit within a building had
7 actual or constructive knowledge or notice of the existence of the
8 nuisance. However, this shall not be construed as limiting or
9 prohibiting the entry of any final order of abatement as provided in
10 this chapter.

11 NEW SECTION. **Sec. 12.** An intentional violation of a restraining
12 order, preliminary injunction, or order of abatement under this chapter
13 is a contempt of court as provided in chapter 7.21 RCW.

14 NEW SECTION. **Sec. 13.** Whenever the owner of a building or unit
15 within a building upon which the act or acts constituting the contempt
16 have been committed, or the owner of any interest in the building or
17 unit has been found in contempt of court, and fined in any proceedings
18 under this chapter, the fine is a lien upon the building or unit within
19 a building to the extent of the owner's interest, subject to the lien
20 of the legal owner. The lien is enforceable and collectible by
21 execution issued by order of the court.

22 NEW SECTION. **Sec. 14.** The abatement of a nuisance under this
23 chapter does not prejudice the right of any person to recover damages
24 for its past existence.

25 NEW SECTION. **Sec. 15.** If any provision of this act or its
26 application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act
30 constitute a new chapter in Title 7 RCW.

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